

§ 50.6 Delegation of Authority.

(a) The Commission hereby delegates to the Director of the Division of Clearing and Risk or such other employee or employees as the Director may designate from time to time, with the consultation of the General Counsel or such other employee or employees as the General Counsel may designate from time to time, the authority:

(1) After prior notice to the Commission, to determine whether one or more swaps submitted by a derivatives clearing organization under § 39.5 falls within a class of swaps as described in § 50.4, provided that inclusion of such swaps is consistent with the Commission's clearing requirement determination for that class of swaps; and

(2) To notify all relevant derivatives clearing organizations of that determination.

(b) The Director of the Division of Clearing and Risk may submit to the Commission for its consideration any matter which has been delegated in this section. Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

§ 50.7–50.9 [Reserved]**§ 50.10 Prevention of evasion of the clearing requirement and abuse of an exception or exemption to the clearing requirement.**

(a) It shall be unlawful for any person to knowingly or recklessly evade or participate in or facilitate an evasion of the requirements of section 2(h) of the Act or any Commission rule or regulation promulgated thereunder.

(b) It shall be unlawful for any person to abuse the exception to the clearing requirement as provided under section 2(h)(7) of the Act or an exception or exemption under this chapter.

(c) It shall be unlawful for any person to abuse any exemption or exception to the requirements of section 2(h) of the Act, including any exemption or exception as the Commission may provide by rule, regulation, or order.

§ 50.11–50.24 [Reserved]**Subpart B—Compliance Schedule****§ 50.25 Clearing requirement compliance schedule.**

(a) *Definitions.* For the purposes of this paragraph:

Active fund means any private fund as defined in section 202(a) of the Investment Advisers Act of 1940, that is not a third-party subaccount and that executes 200 or more swaps per month based on a monthly average over the 12 months preceding the Commission issuing a clearing requirement determination under section 2(h)(2) of the Act.

Category 1 Entity means a swap dealer, a security-based swap dealer; a major swap participant; a major security-based swap participant; or an active fund.

Category 2 Entity means a commodity pool; a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 other than an active fund; or a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, provided that, in each case, the entity is not a third-party subaccount.

Third-party Subaccount means an account that is managed by an investment manager that is independent of and unaffiliated with the account's beneficial owner or sponsor, and is responsible for the documentation necessary for the account's beneficial owner to clear swaps.

(b) Upon issuing a clearing requirement determination under section 2(h)(2) of the Act, the Commission may determine, based on the group, category, type, or class of swaps subject to such determination, that the following schedule for compliance with the requirements of section 2(h)(1)(A) of the Act shall apply:

(1) A swap between a Category 1 Entity and another Category 1 Entity, or any other entity that desires to clear the transaction, must comply with the requirements of section 2(h)(1)(A) of the Act no later than ninety (90) days from the date of publication of such